

LOS/PCN/SCN.3/WP.6/Add.5  
B February 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL  
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL  
TRIBUNAL FOR THE LAW OF THE SEA

Special Commission 3

Eighth session

Kingston, Jamaica

5-30 March 1990

DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION  
OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART VIII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT FROM  
ACTIVITIES IN THE AREA

Working paper by the Secretariat

## Article 1

### Scope of these regulations\*

These regulations apply to the protection and preservation of the marine environment from activities in the Area. 1/

## Article 2

### Use of terms\*

For the purposes of these regulations:

(1) "marine environment" means the physical, atmospheric and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, including the coastline, the waters of the seas and oceans and the airspace above those waters, as well as the sea-bed and ocean floor and subsoil thereof;

(2) "serious harm to the marine environment" means any effect from activities in the Area on the living or non-living components of the marine environment and associated ecosystems beyond that which is negligible or which has been assessed and judged to be acceptable by the Authority pursuant to these regulations and the relevant rules and regulations adopted by the Authority and which represent:

- (a) significant adverse changes in the living and non-living components of the marine and atmospheric environment;
- (b) significant adverse changes in the ecosystem diversity, productivity and stability of the biological communities within the environment; or
- (c) loss of scientific or economic values which is unreasonable in relation to the benefit derived from the activity in question;

(3) "impact reference zones" means areas to be used for assessing the effect of each contractor's activities in the Area on the marine environment and designated in each mining site so as to be:

- (a) representative of the environmental characteristics of the site; and

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\* The provisions of these articles could form part of Part I (Scope of the regulations and use of terms). For suggested amendments to arts. 5, 9 and 28 of the draft regulations (LOS/PCN/SCN.3/WP.6/Rev.1), see the annex to the present paper.

1/ See art. 209 (1).

- (b) located in a portion of the site scheduled to be mined early under the contract;

(4) "preservation reference zones" means areas in which no mining shall occur to ensure representative and stable biota of the sea-bed in order to assess any changes in the flora and fauna of the marine environment.

#### PART VIII

#### PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT FROM ACTIVITIES IN THE AREA

##### Article 104

##### General obligation

1. States have the obligation to protect and preserve the marine environment from activities in the Area. <sup>2/</sup>
2. They shall co-operate, directly or through competent international organizations, for the purpose of protecting and preserving the marine environment from activities in the Area.

##### Article 105

##### Conditions for carrying out activities in the Area

1. Activities in the Area shall only take place if they do not cause serious harm to the marine environment.
2. Activities in the Area shall only take place if:
  - (a) the technology and procedures are available to provide for safe activities and compliance with paragraph 1;
  - (b) there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify any adverse effects of activities; and
  - (c) there exists the capacity to respond effectively to accidents, particularly those which might cause serious harm to the marine environment.
3. The Council shall adopt upon recommendation of the Legal and Technical Commission rules and regulations which elaborate the standards contained in article 2, paragraph 2.

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<sup>2/</sup> Based on art. 192.

#### Article 106

##### Exclusion of areas for exploitation

Upon the recommendation of the Legal and Technical Commission, the Council shall exclude areas for exploitation by contractors in cases where substantial evidence indicates the risk of serious harm to the marine environment. 3/

#### Article 107

##### Environmental reference zones

1. After the reserved area has been designated in accordance with article 28, 4/ the applicant shall propose areas to be set aside and used exclusively as impact reference zones and preservation reference zones.
2. Upon the recommendation of the Legal and Technical Commission and taking into account the proposal of the applicant, the Council shall, at the time of approving the plan of work, set aside parts of the areas covered by the plan of work to be used exclusively as preservation reference zones and impact reference zones.

#### Article 108 5/

##### Procedure for submission of an environmental report or an environmental impact statement

1. Before the Legal and Technical Commission recommends for approval a plan of work for exploration, each applicant shall prepare and submit an environmental report, based on available meteorological, oceanographic and environmental data collected during prospecting, and a programme for oceanographic and baseline environmental studies using:

(a) oceanographic (physical, chemical and biological) data of a general as well as of a site-specific nature using standard techniques;

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3/ Based on arts. 165 (2) (1), 162 (2) (x) and Annex III, art. 6 (1) (b).

4/ See LOS/PCN/SCN.3/WP.6/Rev.1.

5/ The Commission may wish to consider whether the provisions of this article should be transferred to art. 29 (Data and information to be submitted by the applicant before final approval of the plan of work) of LOS/PCN/SCN.3/WP.6/Rev.1.

(b) biological data from samples and photographs; 6/

(c) geological data on sediment transport.

2. Before the Legal and Technical Commission recommends for approval a plan of work for exploitation, each applicant shall prepare and submit an environmental impact statement, taking into account the experience gained during the exploration stage.

3. In cases where the application is for the approval of a plan of work for exploration and exploitation, exploitation may not commence before the submission to the Legal and Technical Commission of an environmental impact statement.

#### Article 109

##### Environmental impact statement

1. Each environmental impact statement shall be site-specific and shall contain:

(a) data establishing an environmental baseline against which to assess the likely effect of the proposed activities in the Area;

(b) a description of the methods, technology, equipment and procedures to be used;

(c) an assessment of the effects on the marine environment of the proposed activities in the Area, especially of:

(i) the nodule collector in and near the mining tracks;

(ii) the benthic plume on benthic life, and its food supply, away from the mining activity; and

(iii) the surface and mid-water plume on fish larvae.

(d) a contingency plan to respond effectively to serious harm to the marine environment arising from the contractor's activities in the Area;

(e) a plan to minimize to the fullest possible extent in accordance with article 111, paragraph 2, pollution of the marine environment arising from the contractor's activities in the Area; 7/

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6/ See LOS/PCN/BUR/R.5, paras. 26, 28, 37 and 38.

7/ Based on art. 194 (3).

(f) a plan to monitor and report on the effects on the marine environment of the contractor's activities in the Area; 8/

(g) a description of the positions, qualifications, experience and availability of qualified persons on whom the applicant will rely to operate installations and equipment in accordance with the plans.

2. Each plan referred to in subparagraphs (d), (e) and (f) of paragraph 1 shall contain a description of the methods, technology and equipment proposed to be used in connection with the plan, the applicant's experience in using it and its reliability.

3. Environmental impact statements shall be made publicly available.

#### Article 110

##### Consideration of an environmental report or an environmental impact statement

1. The Legal and Technical Commission shall examine each environmental report or environmental impact statement and plans contained therein. It shall determine, taking into account the analyses and information contained in the applicant's report or statement, whether the exploration or exploitation can reasonably be expected to result in serious harm to the marine environment.

2. If the Legal and Technical Commission finds that an environmental report or environmental impact statement does not comply with these regulations, or is otherwise incomplete or defective, or that the proposed plans do not ensure the effective protection and preservation of the marine environment, it shall notify the applicant. The applicant may submit an amended report or statement to the Legal and Technical Commission within a reasonable time.

3. The Legal and Technical Commission shall make its report and recommendation to the Council on the effects on the marine environment within a reasonable time from the date of receipt of each environmental report or environmental impact statement or from the date of receipt of an amended report or statement.

4. The Legal and Technical Commission may request an independent expert to assess whether all data required by these regulations have been submitted.

5. Upon receiving the Legal and Technical Commission's report and recommendation, the Council shall exclude parts of the application areas for exploitation by contractors in cases where substantial evidence indicates serious harm to the marine environment.

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8/ Based on art. 204.

### Article 111

#### Terms and conditions for the protection and preservation of the marine environment

Each contract shall contain provisions for the protection and preservation of the marine environment from activities in the Area including, *inter alia*:

- (a) a plan to monitor and report on the effects of the contractor's activities in the Area on the marine environment; 9/
- (b) requirements to avoid serious harm to the marine environment that may arise from activities in the Area carried out by the contractor and to minimize to the fullest possible extent the risk of serious harm to the marine environment;
- (c) requirements to use where practicable the best available technology for the protection and preservation of the marine environment wherever such activities would cause serious harm to the marine environment;
- (d) the specific data and information to be submitted in the contractor's reports on the effect of its activities in the Area on the marine environment; and
- (e) a contingency plan to respond effectively to incidents which are likely to cause serious harm to the marine environment arising from the contractor's activities in the Area. 10/

### Article 112

#### Contingency plans

1. Contingency plans shall establish special procedures for dealing with incidents which may result or are about to result in serious harm to the marine environment arising from the contractor's activities in the Area.
2. The contingency plan shall establish appropriate measures for dealing effectively with contingencies and, in particular, shall include arrangements for:
  - (a) the immediate raising of an alarm in the area of the activities;
  - (b) prompt notification to the Secretary-General;
  - (c) the warning, as may be necessary, of ships which might be about to enter the immediate vicinity;

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9/ Based on art. 204.

10/ Based on art. 199.

(d) a continuing flow of full information relating to particulars of the contingency, measures already taken and further action required, to the Secretary-General;

(e) the removal, as appropriate, of polluting substances;

(f) the reduction and, in so far as possible, prevention of serious harm to the marine environment, as well as mitigation of such effects;

(g) as appropriate, co-operation among contractors to respond to a contingency; and

(h) periodic emergency exercises.

#### Article 113

##### Annual reports

1. Each contractor shall submit an annual report on the effects of the contractor's activities in the Area on the marine environment to the Secretary-General within 90 days after the end of each calendar year.
2. Each report shall contain such data and information as shall be specified in the contract and on the basis of relevant rules and regulations.
3. The report shall be made publicly available.

#### Article 114

##### Reports of serious harm to the marine environment

1. Each contractor shall promptly report to the Secretary-General any incident arising from its activities in the Area which are likely to cause serious harm to the marine environment.
2. Each such report shall contain the details of such incident, including, inter alia:

(a) the co-ordinates of the area affected or which can reasonably be anticipated to be affected;

(b) the effect such incident is likely to have on the flora and fauna, the sea-bed, its subsoil, the sea, the atmosphere and the coastline: 11/

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11/ Based on art. 145.

(c) the description of the action being taken to prevent, contain, minimize and repair the serious harm to the marine environment;

(d) a description of the action being taken to monitor the effects of the incidents on the marine environment;

(e) such other information as may be required by the rules and regulations of the Authority.

#### Article 115

##### Inspectors 12/

1. Each contractor shall permit the Authority to send its inspectors on board vessels and installations used by the contractor to carry out activities in the Area 13/ in order to:

(a) monitor such activities for compliance with the terms and conditions of the contract and with these regulations concerning the protection and preservation of the marine environment from activities in the Area; and

(b) monitor the effects of such activities on the marine environment.

2. Each contractor shall assist the inspectors in the performance of their duties and provide access to all relevant equipment, facilities and personnel on vessels and installations at all reasonable times.

3. Each inspector shall have reasonable access to the records of any vessel or installation, including its log and documentation, and all other recorded data which are necessary for monitoring the contractor's compliance.

4. Inspectors shall avoid interference with the safe and normal operations on board vessels and installations used by the contractor to carry out activities in the Area visited and shall act in accordance with measures adopted to protect confidentiality of data and information of commercial value.

5. Inspections carried out by the Authority or by the sponsoring State or States shall be compatible and reinforce each other and shall not impose an undue burden on the operation of vessels and installations visited.

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12/ Based on arts. 162 (2) (z), 165 (2) (m) and Annex III, art. 17 (1) (b) (viii).

13/ Based on art. 153.

6. No contractor or employee of a contractor shall interfere with inspectors in the performance of their duties.

7. The Secretary-General shall give reasonable notice to the contractor of, inter alia:

(a) the name of the inspector;

(b) the length of time which the inspector is likely to be on board a vessel or installation; and

(c) activities of the inspector that are likely to require assistance from personnel of the vessel or installation for the use of the equipment of the vessel or installation.

8. The inspectors shall transmit their reports to the Secretary-General.

#### Article 116

##### Compliance

1. Each contractor shall take all necessary measures to ensure compliance with its obligations contained in the contract and particularly with the obligations with regard to the protection and preservation of the marine environment from activities in the Area and ensure the avoidance of serious harm to the marine environment including the coastline from activities in the Area and also from disposal of waste, dumping and discharge of sediment, wastes or other effluents into the marine environment.

2. Each contractor shall endeavour to minimize pollution to the fullest possible extent.

#### Article 117

##### Obligations of the sponsoring State

1. The sponsoring State has the obligation to inspect at regular intervals to be determined by the Council its contractor's activities in the Area in order to ensure compliance with the rules and regulations of the Authority as well as the terms and conditions of the contract. The sponsoring State shall transmit the reports of its inspectors to the Council.

2. In cases where there are two or more sponsoring States for one contractor, the sponsoring States shall determine which of them has to fulfil the obligation specified in paragraph 1. They shall inform the Council of their decision.

Article 118

Rights and legitimate interests of coastal States

1. Any coastal State which has reason to believe that any activity in the Area by a contractor is likely to cause serious harm to the marine environment in maritime areas under its jurisdiction or sovereignty or its coastline and land territory may notify the Secretary-General and request that he take the necessary action within his competence to prevent serious harm.
2. Upon receipt of such notification, the Secretary-General shall notify the contractor and the sponsoring State or States.
3. Neither these regulations nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII of the Convention or with other relevant international agreements as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area. <sup>14/</sup>

Article 119

Emergency orders

1. In the event that the Secretary-General is notified of an incident causing serious harm to the marine environment arising from a contractor's activities in the Area, he shall transmit it immediately to the Council and the Legal and Technical Commission.
2. The Legal and Technical Commission shall meet as soon as possible after having received the report on the serious harm to the marine environment and shall consider, taking into account the measures already taken by the contractor, which measures are necessary to respond effectively to the accident and to contain, minimize and repair the serious harm. It shall make relevant recommendations to the Council.
3. After having received the recommendations of the Legal and Technical Commission the Council shall meet as soon as possible and decide on the recommendations submitted by the Legal and Technical Commission.
4. Taking into account the recommendations of the Legal and Technical Commission the Council may issue emergency orders which may include orders for the suspension

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<sup>14/</sup> Based on art. 142 (3).

or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area. <sup>15/</sup>

5. Pending any action by the Council the Secretary-General may take any immediate measures that may be practical and reasonable in the circumstances to prevent serious harm to the marine environment, including measures to contain, minimize and repair the serious harm.

#### Article 120

##### Authority to take measures to protect and preserve the marine environment

If a contractor does not take the action required by the terms and conditions of its contract after having received reasonable notice or does not promptly comply with an emergency order to prevent serious harm to the marine environment arising out of activities in the Area, the Council by itself or through arrangements with others on its behalf may take such reasonable measures as are necessary to prevent and contain, minimize or repair any such harm to the marine environment.

#### Article 121

##### Responsibility of the sponsoring State or States

The sponsoring State or States shall, pursuant to article 139 of the Convention, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under the Convention with respect to the protection and preservation of the marine environment from activities in the Area. <sup>16/</sup>

#### Article 122

##### Liability for serious harm to the marine environment

1. The contractor carrying out activities in the Area shall respond with necessary and timely action, including measures to prevent and contain, minimize and repair, if such activities result in or threaten to result in serious harm to the marine environment.

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<sup>15/</sup> Based on art. 162 (2) (w) and 165 (2) (k).

<sup>16/</sup> Based on Annex III, art. 4 (4).

2. A contractor shall be liable for:

(a) serious harm to the marine environment arising from its activities in the Area, including payment to the Authority in the event that the contractor has not taken adequate action in the opinion of the Council to contain, minimize and repair the serious harm;

(b) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in subparagraph (a); 17/

(c) reimbursement of reasonable costs incurred pursuant to article 120 relating to necessary response action, including measures taken to prevent and contain, minimize and repair where activities of the contractor result in or threaten to result in serious harm to the marine environment of the Area.

3. The contractor shall not be liable pursuant to paragraph 2 if he proves that serious harm to the marine environment has been caused directly by, and to the extent that it has been caused directly by:

(a) an event constituting a natural disaster of an exceptional character which could not reasonably have been foreseen;

(b) armed conflict or an act of terrorism directed against the activities of the contractor, against which no reasonable precautionary measures could have been effective.

4. A sponsoring State shall not be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction. 18/

5. Liability of a contractor for any loss of life, personal injury or loss of or damage to property other than that governed by this article shall be regulated by applicable law and procedures.

6. If a contractor proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that contractor may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.

7. Nothing in this article shall be construed so as to:

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17/ The Commission may wish to consider whether third parties include juridical or natural persons from non-States parties.

18/ Annex III, art. 4 (4).

(a) preclude the application of existing rules on liability and the development in accordance with international law of further such rules; or

(b) affect the right of a contractor incurring liability pursuant to this article to seek redress from another party which caused or contributed to the damage in question.

8. When compensation has been paid to a third party in respect of an incident referred to in paragraph 2 (b) other than under this Convention, liability in respect of such incident under this Convention shall be offset by the amount of such payment. 19/

9. Any party to a dispute concerning the liability of a contractor for such damage, the amount of compensation or whether such compensation has been paid promptly, may submit the dispute to the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

10. Any final decision rendered by the Chamber or the arbitration tribunal shall be enforceable in the territory of each State party. 20/

#### Article 123

##### Penalties

1. A contractor's rights under the contract may be suspended or terminated:

(a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, relating to the protection and preservation of the marine environment from activities in the Area and these regulations or other regulations of the Authority; or

(b) if the contractor has failed to comply with a final binding decision of the dispute settlement body referred to in article 122, paragraph 9.

2. In the case of any violation of the contract not covered by paragraph 1 (a), or in lieu of suspension or termination under paragraph 1 (a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.

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19/ The Commission may wish to consider the establishment of a fund in order to ensure that liabilities which are not discharged by contractors are met.

20/ Annex III, art. 21 (2).

3. Except for emergency orders under article 119, the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5, of the Convention. 21/

#### Article 124

##### Monitoring programme of the Authority

1. The Legal and Technical Commission shall make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area. 22/

2. The Council shall consider the recommendations of the Legal and Technical Commission and approve the establishment of a monitoring programme.

3. The Legal and Technical Commission shall ensure that existing regulations are adequate and are complied with and co-ordinate the implementation of the monitoring programme approved by the Council. 23/

#### Article 125

##### Data not to be deemed proprietary

Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection and preservation of the marine environment and safety, other than equipment design data, shall not be deemed proprietary. 24/

#### Article 126

##### Application of these regulations to the Enterprise

These regulations apply mutatis mutandis to the activities of the Enterprise in the Area.

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21/ Ibid., art. 18.

22/ Based on art. 165 (2) (h).

23/ Ibid.

24/ Based on Annex III, art. 14 (2).

Article 127

Rules, regulations and procedures concerning the protection  
and preservation of the marine environment

The Legal and Technical Commission shall re-examine from time to time, as necessary, the rules, regulations and procedures of the Authority to protect and preserve the marine environment from activities in the Area and make appropriate recommendations to the Council, taking into account the views of recognized experts in that field. 25/

Article 128

Disputes

Disputes concerning the interpretation or application of these regulations shall be submitted to either the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

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25/ Art. 209 (1).

Annex

SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING,  
EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE  
AREA (LOS/PCN/SCN.3/WP.6/Rev.1)

1. Add a new subparagraph (d) to article 5 (with the present subparagraph (d) to become subparagraph (e)):

"(d) a description of the state of the environment in the area or areas within which prospecting is to be conducted;"

2. Add to article 9 (3) the following subparagraph:

"(d) observations concerning any harmful effects on the marine environment arising out of the methods, technology, equipment and procedures used during the prospecting period."

3. Add to article 28 (1) (b):

", and a report on the anticipated immediate and long term environmental impact based on available data."

4. Add to article 28 (3) (a):

", and a description and an assessment of the effectiveness of the methods, technology, equipment and procedures to be used to prevent, reduce and control pollution of the marine environment." (art. 194 (1))

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LOS/PCN/SCN.3/WP.6/Add.6  
19 December 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL  
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL  
TRIBUNAL FOR THE LAW OF THE SEA

Special Commission 3  
Ninth session  
Kingston, Jamaica  
25 February-22 March 1991

DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION  
OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART IX

ACCOMMODATION OF ACTIVITIES IN THE AREA AND  
IN THE MARINE ENVIRONMENT

Working paper by the Secretariat

Introductory note

1. The 1982 Convention on the Law of the Sea has as one of its corner-stones the need to accommodate the various uses of the oceans, especially with respect to areas beyond the limits of national jurisdiction. In particular, it declares that activities in the Area shall be carried out only with reasonable regard for other maritime activities while, in exercising the various freedoms of the high seas States are enjoined to pay due regard to activities in the Area (arts. 87 and 147).

2. The present draft regulations are intended to ensure that activities in the Area and other activities in the marine environment shall be carried out in a manner which does not give rise to conflicts among parties conducting such activities. The draft regulations are based primarily on articles 60 and 147 of the Convention. They also take account of the guidelines and standards proposed by the International Maritime Organization (IMO) for the removal of offshore installations and structures on the continental shelf in the exclusive economic zone.

Article 1

Scope of these regulations

These regulations apply to activities in the Area in relation to other activities in the marine environment. 1/

Article 2

Use of terms 2/

For the purposes of these regulations:

"Installations" includes, unless otherwise specified, artificial islands, platforms, structures, equipment and surface and bottom devices used for carrying out activities in the Area; and vessels when carrying out activities in the Area. 3/

PART IX

ACCOMMODATION OF ACTIVITIES IN THE AREA AND  
IN THE MARINE ENVIRONMENT

Article 129

Reasonable regard for other activities

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment. 4/
2. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area. 5/

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1/ Article 147.

2/ This article could form part of article 2 (Use of terms) of document LOS/PCN/SCN.3/WP.6/Rev.1.

3/ See articles 1 (1) (5), 60 (1), 194 (3) (c) and 258.

4/ Article 147 (1).

5/ Article 147 (3).

Article 130

Erection and emplacement of installations

1. Stationary or mobile installations used for carrying out activities in the Area shall be erected and emplaced solely in accordance with Part XI of the Convention and subject to the rules, regulations and procedures of the Authority. 6/
2. Such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity. 7/
3. Such installations shall be used exclusively for peaceful purposes. 8/
4. Such installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf. 9/

Article 131

Identification

Each installation shall bear identification markings, and permanent means for giving warning of its presence must be maintained in accordance with the standards established by the competent international organization and the rules, regulations and procedures of the Authority. 10/

Article 132

Safety zones

1. Safety zones shall be established around installations to ensure the safety of both navigation and the installations. 11/

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6/ Article 147 (2) (a).

7/ Article 147 (2) (b).

8/ Article 147 (2) (d).

9/ Article 147 (2) (e).

10/ Articles 60 (3) and 147 (2) (a).

11/ Article 147 (2) (c).

2. The configuration and location of the safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes. 12/

3. The breadth of the safety zones shall be determined by the Enterprise or the contractor taking into account applicable international standards. Such zones shall be of a breadth reasonably related to the nature and function of the installations and shall not exceed a distance of 500 m measured from the outer edge of all parts of the installations, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given to the extent of safety zones. 13/

4. The outside edges of safety zones shall be appropriately marked with buoys conforming to generally accepted international standards or as recommended by the competent international organization so as to ensure the safety of both navigation and the installations.

#### Article 133

##### Notice 14/

1. Notice specifying the type, shape, dimensions, position, depth and markings of each installation shall be given to mariners and appropriate hydrographic services taking into account the standards and recommendations of the competent international organization and in accordance with the rules, regulations and procedures of the Authority.

2. Such notice shall be given by the Enterprise or the contractor sufficiently in advance of the erection, emplacement or removal of any installation in the Area to allow for timely revision of nautical charts by appropriate hydrographic services.

#### Article 134

##### Removal of installations

1. Any installation which is abandoned or disused shall be removed to ensure safety of navigation, taking into account generally accepted international standards established in this regard by the competent international organization and in accordance with the rules, regulations and procedures of the Authority. 15/

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12/ Article 147 (2) (c).

13/ Article 60 (5).

14/ Article 147 (2) (a).

15/ Articles 60 (3) and 147 (2) (a).

2. Such removal shall also have due regard to fishing and the protection of the marine environment, and due regard for the interests of States in the exercise of the freedom of the high seas. 16/
3. Such removal shall be performed as soon as reasonably practicable after abandonment or disuse of the installation.
4. An unobstructed water column sufficient to ensure safety of navigation shall be provided above any partially removed installation which does not project above the surface of the sea.
5. The Enterprise or the contractor shall ensure that the appropriate hydrographic services are notified of the position, depth and dimensions of material from any installation which has not been entirely removed from the sea-bed.
6. The Enterprise or the contractor shall also ensure that advance notice of at least 120 days is issued to advise mariners and appropriate hydrographic services of the change in the status of the installation.

#### Article 135

##### Conduct of activities

1. If any party believes that activities in the Area are likely to be carried out or are being carried out without reasonable regard for other activities conducted by that party in the marine environment or if the Enterprise or a contractor believes that other activities in the marine environment are likely to be conducted or are being conducted without reasonable regard for its activities in the Area, it may notify the Secretary-General in writing.
2. The notification shall identify:
  - (a) the party giving the notification and its activities in the marine environment;
  - (b) the activities it claims are likely to be conducted or are being conducted without reasonable regard for its activities in the marine environment;
  - (c) the party which is carrying out these activities.
3. The Secretary-General shall bring each notification to the attention of the competent international organization.

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16/ Articles 60 (3) and 87.

4. After consultation with the Legal and Technical Commission, if the Secretary-General finds that the activities in the Area are likely to be carried out or are being carried out without reasonable regard for other activities in the marine environment, he may notify the Enterprise or the contractor to cease or appropriately modify such activities forthwith or as soon as practicable.

5. In the event of non-compliance with such notification, the Secretary-General, after consultation with the Legal and Technical Commission, shall take such action in accordance with the terms and conditions of any applicable contract and such other action as he deems appropriate under the circumstances in accordance with the rules, regulations and procedures of the Authority.

6. If the Secretary-General finds that other activities in the marine environment are likely to be conducted or are being conducted without reasonable regard for activities in the Area, the Secretary-General may use his good offices with the parties concerned to reach a reasonable accommodation in the circumstances.

#### Article 136

##### Consultation and co-operation with other international organizations

The Secretary-General shall consult with other competent international and non-governmental organizations recognized by the Economic and Social Council of the United Nations and co-operate with them with a view to harmonizing regulations governing other activities in the marine environment with regulations governing activities in the Area.

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LOS/PCN/SCN.3/WP.6/Add.7  
19 December 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL  
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL  
TRIBUNAL FOR THE LAW OF THE SEA  
Special Commission 3  
Ninth session  
Kingston, Jamaica  
25 February-22 March 1991

DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION  
OF POLYMETALLIC NODULES IN THE AREA

Addendum

PART X

ACCOUNTING PRINCIPLES AND PROCEDURE

Working paper by the Secretariat

Introductory note

1. Annex III, article 17 (1) (c) (i) requires that the Authority "adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2 (f) (ii), and article 162, paragraph 2 (o) (ii), for ... [the] establishment of uniform and non-discriminatory costing and accounting rules ..."
2. The present draft regulations are based on the accounting procedures now being used by several of the largest petroleum companies engaged in offshore petroleum production in a number of countries in Africa, Asia and South America, and on a model form prepared by the United Nations Centre on Transnational Corporations in 1981. The draft has benefited from the review and suggestions made by specialists with experience in accounting for offshore operations in one of the six largest international accounting firms.

3. The draft regulations establish the parameters for a uniform accounting system. The draft represents an attempt to balance the requirement for uniformity with flexibility to enable each contractor to establish through its own accounting manual and chart of accounts, which are subject to the approval of the Authority, the detailed accounting procedures which best fit its own operations and are consistent with the accounting requirements of its own independent auditors and applicable national legislation.

4. A uniform accounting system is necessary in order "to ensure equality of financial treatment and comparable financial obligations for contractors" under annex III, paragraph 13 (1) (c), and "to ensure optimum revenues for the Authority from the proceeds of commercial production" under annex III, paragraph 13 (1) (a). In this respect, the draft regulations supplement the draft regulations on the financial terms of contract and are necessary to implement them.

5. At the same time, the uniformity of accounting rules will allow the Authority to be able to compare the performances of contractors to ensure that operations are carried out with economy and efficiency so as to ensure optimum revenues and discharge its obligations to supervise operations under annex III, paragraph 17 (1) (b) (viii).

6. The draft regulations also apply, mutatis mutandis, to the Enterprise; this will allow for the comparability of the Enterprise's performance with the performances of contractors so as to ensure that the Enterprise operates in accordance with "sound commercial principles", pursuant to annex IV, paragraph 1 (3).

7. It is recognized that the present draft regulations have been prepared on the basis of experience in offshore petroleum operations, not deep-sea mining operations. But, perforce, offshore petroleum operations offer the best available model for use at this time. Of course, as experience is gained by contractors and the Authority, it will be possible to modify or amend the regulations in accordance with the applicable provisions of the Convention and as required for efficiency and economy.

Article 2

Use of terms\*

For the purposes of these regulations:

(1) "Accounting Manual" means a manual, approved by the Authority, containing detailed instructions for internal control procedures, the chart of accounts, the recording of transactions of operations, the preparation of analyses and working papers and the preparation and distribution of financial reports. The Accounting Manual shall include a material classification section with a detailed list of controllable materials;

(2) "Accounting records" means all books of account maintained in accordance with the Accounting Manual, together with all supporting documents, analyses, working papers and reports;

(3) "Controllable materials" means those items of sufficient importance, with respect to value and other factors, to warrant detailed records reflecting acquisition, location and disposition. In this respect, international mining industry practice and a controllable material classification section of the Accounting Manual shall be used for determining controllable materials.

PART X

ACCOUNTING PRINCIPLES AND PROCEDURE

Article 137

Scope of this Part 1/

The regulations contained in this Part provide a uniform system of accounting to record all financial transactions of contractors, to provide a system and standards for handling funds, materials and equipment and to provide the basis for preparing the reports required by these regulations and the contract.

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\* The provisions of this article will be incorporated in an article 2 (see LOS/PCN/SCN.3/WP.6/Rev.1) on the use of terms applying to the complete set of regulations on prospecting, exploration and exploitation of polymetallic nodules in the Area ("deep sea-bed mining code").

1/ A3/17 (1) (c) (i).

#### Article 138

##### Accounting principles

1. All costs and expenditures shall be reasonable and necessary, consistent with efficient and economical operations.
2. All books and accounting records shall be kept, and all costs, expenditures, proceeds and revenues determined and recorded, in conformity with generally recognized accounting principles 2/ consistent with practices accepted in the international mining industry and these regulations.
3. The Authority shall from time to time review such principles and practices to ensure that they are generally recognized and consistent with such accepted practices, guided by the Commission on Transnational Corporations of the United Nations, the Group of Experts on Tax Treaties between developing and developed countries and other international organizations. 3/

#### Article 139

##### Currencies

1. The United States dollar shall be the unit of account. If a transaction is carried out in another currency, the amount of the transaction shall be translated into United States dollars, unless the Authority shall otherwise agree, at the average of the buying and selling rates quoted for the day the transaction occurred by the International Monetary Fund.
2. Realized foreign currency gains or losses, if any, shall be recorded in a separate account.

#### Article 140

##### Accounts and manuals

1. A comprehensive chart of accounts and related account definitions, together with the Accounting Manual for use under the contract, shall be submitted by each contractor for approval by the Authority within 60 days from the effective date of the contract.
2. A complete set of books of account shall be kept at each contractor's principal place of business.

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2/ A3/13 (6) (h) (i), (k), (l), (n) (iv) and (v), (7) (b), (11).

3/ A3/13 (9) (b).

Article 141

Accounting for materials and supplies

1. Materials and supplies purchased by the contractor and held solely for use in the contractor's operations under its contract shall be charged at invoice price, less all discounts and rebates, plus actual costs including freight, insurance, duties, fees, handling charges and other costs actually paid to the point of use.

2. Materials and supplies furnished from the contractor's stocks shall be charged as follows:

(a) New material - Condition A: New material transferred from the contractor's warehouse or other properties shall be priced on the basis of the contractor's direct costs and expenses incurred in procuring such new material in accordance with paragraph 1 of this article, the costs of making them suitable for use and the costs of moving the material to the location where the material will be used;

(b) Used material - Condition B: Material which is in sound and serviceable condition and is suitable for reuse without reconditioning shall be classified as Condition B and priced at 75 per cent of the Condition A price;

(c) Used material - Condition C: Material which after reconditioning will be serviceable for the material's original function or is serviceable for its original function but which is substantially not suitable for reuse without reconditioning shall be classified as Condition C and priced at 50 per cent of the Condition A price. The costs for such reconditioning shall be added to the 50 per cent of the Condition A price, provided that the total does not exceed 75 per cent of the Condition A price;

(d) Material which cannot be classified as Condition A, B or C shall be priced at a value commensurate with its use.

3. Each contractor shall keep perpetual accounting records of controllable materials transferred into and out of warehouses and controllable materials in inventory.

4. Subject to paragraph 2 of this article, each contractor shall elect a cash flow assumption for controllable materials which shall be used consistently during the life of the contract and which shall not be changed without the consent of the Authority.

5. Subject to paragraphs 2 and 4 of this article, each contractor shall use the methods prescribed in the Accounting Manual for computing the unit cost of controllable materials.

6. At the request of the Authority, each contractor shall furnish reports and lists of all the controllable material in inventory to the Authority.

7. Each contractor shall conduct, once a year, if feasible, or upon the request of the Authority, a physical inventory of the controllable materials which it maintains.

8. Each contractor shall give written notice, if feasible, to the Authority and to the accountants 60 days before each physical inventory date to allow time for their participation.

9. The gain or loss resulting from the physical inventory shall be reflected in the perpetual accounting records and the appropriate operating account. If the gain or loss is significant, the contractor shall compile a list of the gains and losses and attach to it reasonable explanations for the differences. This report shall be submitted to the Authority for approval. For purposes of this paragraph, significant gain or loss means any total inventory adjustment exceeding one per cent of the total dollar value of inventory before adjustment.

#### Article 142

##### Accounting for equipment 4/

1. Equipment purchased by the contractor and capitalized as a physical asset shall be charged mutatis mutandis in accordance with article 141.

2. Each contractor shall conduct, every five years or upon the request of the Authority, a physical inventory of capitalized physical assets.

3. Each contractor shall give written notice to the Authority and to the accountants 60 days before each physical inventory date to allow time for their participation.

4. The gain or loss resulting from a physical inventory shall be reflected in the perpetual accounting records and the appropriate capital account. If the gain or loss is significant, the contractor shall compile a list of the gains and losses and attach to it reasonable explanations for the differences. This report shall be submitted to the Authority for approval. For purposes of this paragraph, significant gain or loss means any total inventory adjustment exceeding one per cent of the total dollar value of physical assets before adjustment.

#### Article 143

##### Personnel costs

1. Personnel costs which are directly incurred in operations under a contract shall include the gross salaries, wages, bonuses and premiums paid to the

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4/ See A3/13 (6) (m).

contractor's employees and the expenses or contributions, if any, incurred or made pursuant to assessments or obligations applicable to such costs imposed by a Government.

2. Costs for holiday, vacation, sickness and disability payments applicable to salaries and wages, together with other employee benefits such as group life and medical insurance, pension and savings plans, shall be charged in accordance with the standards and procedures of the Accounting Manual.

3. Travel and subsistence costs of personnel shall be charged in accordance with the standards and procedures of the Accounting Manual.

#### Article 144

##### Charges for training programmes for personnel of the Authority and developing States 5/

The costs for the training of personnel of the Authority and developing States, including the participation of such personnel in the contractor's activities in the Area which is covered by the contract, shall be charged in accordance with the terms and conditions of the contract and the standards and procedures specifically agreed by each contractor with the Authority.

#### Article 145

##### Charges for transfer of data to the Authority 6/

Costs for the transfer of data by the contractor to the Authority in respect of the Area covered by the contract shall be charged in accordance with the terms and conditions of the contract and the standards and procedures specifically agreed by each contractor and the Authority.

#### Article 146

##### Charges for third-party contracts

The actual direct costs of contracts for technical and other services supplied by third parties shall be charged, provided that such costs are reasonable and necessary and are not higher than those generally charged for comparable work and services.

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5/ A3/15.

6/ A3/14.

Article 147

Charges for affiliates

Charges for transactions with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor, for services, materials, equipment and other costs, shall be at actual cost on the basis of arm's length prices and such other terms and conditions as would have applied in a normal commercial manner in the ordinary course of business had the transaction occurred between unrelated parties or if the parties were not in any special relationship. 7/

Article 148

Rental payments

Rental payments, except for land, included in the contractor's development costs, development costs of the mining sector and the contractor's operating costs shall be charged only to the extent that the present value of any capitalized lease obligations are included in the debt-equity ratio approved by the Authority, and to the extent that the interest rates have been found reasonable by the Authority having regard to existing commercial practices in accordance with article 78. 8/

Article 149

Insurance costs and losses

Actual net premiums for insurance, the deductible portion of insured losses and losses not covered by insurance shall be charged unless such losses result from the gross negligence or wilful misconduct of the contractor.

Article 150

Legal costs

The direct costs of legal services necessary or expedient for the protection of the contractor's interests under the contract may be charged, to the extent that they are fair and reasonable, as part of the contractor's development costs, development costs of the mining sector and the contractor's operating costs, provided such costs were incurred after the effective date of the contract.

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7/ See A3/13 (9) (a).

8/ See LOS/PCN/SCN.3/WP.6/Add.2/Rev.1.

Article 151

Overhead and administrative costs

1. Administrative costs incurred after the effective date of the contract specifically and solely related to operations under the contract for personnel performing supervisory, accounting, employee relations, computer services, purchasing, engineering, tax, administrative and management functions and related office costs shall be charged as development costs or operating costs.
2. Overhead costs not included in paragraph 1 incurred after the effective date of the execution of the contract shall be charged as follows:
  - (a) \_\_\_\_\_ per cent of development costs;
  - (b) \_\_\_\_\_ per cent of operating costs. 2/
3. The salaries, wages and expenses of technical employees directly employed in operations under the contract shall not be included in the overhead costs provided in paragraph 2 but shall be charged directly.
4. Overhead costs incurred in connection with action taken to contain, minimize and repair serious harm to the marine environment, or as a consequence of an explosion, fire, storm, hurricane or other catastrophe, which are necessary to restore plant and equipment to the equivalent condition that existed prior to such catastrophe, not attributable to the contractor's negligence or failure to use good mining industry practice, shall be charged as follows:
  - (a) \_\_\_\_\_ per cent of total costs up to and including \$1 million;
  - (b) \_\_\_\_\_ per cent of total costs above \$1 million but not more than \$10 million;
  - (c) \_\_\_\_\_ per cent of total costs above \$10 million.
5. The rates provided in paragraphs 2 and 3 may be amended from time to time by agreement of the contractor and the Authority if, in practice, the rates are found to be excessive or insufficient.

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2/ Consideration could be given to using a downward sliding scale, e.g., four per cent on the first \$10 million, three per cent between \$10 and 50 million, two per cent between \$50 and 100 million, one per cent thereafter.

Article 152

Credits

The net proceeds of the following transactions shall be credited to the accounts under the contract:

- (a) The proceeds of any insurance or claim in connection with the operations under the contract or any assets charged to the accounts under the contract when such operations or assets were insured and the premium charged to the accounts under the contract;
- (b) Revenue received from third parties for the use of property or assets charged to the accounts under the contract;
- (c) Any adjustment received by the contractor from suppliers or manufacturers or their agents in connection with defective material the costs of which was previously charged by the contractor to the accounts under the contract;
- (d) Rentals, refunds or other credits received by the contractor which apply to any charge which has been made to the accounts under the contract.

Article 153

Duplication of costs, charges and credits

Notwithstanding any provision to the contrary, there shall be no duplication of costs, charges and credits under any contract between a contractor and the Authority.

Article 154

Financial reports

1. Each contractor shall prepare quarterly and annual financial reports of the books of accounts in accordance with this Part and the Accounting Manual.
2. Each report shall consist of a profit-and-loss statement, a balance sheet, a statement of cash flow and a schedule of accrued accounts receivable and payable. The annual report shall also include an analysis of physical inventory gains and losses. Each annual report shall be accompanied by a projected or forecast budget profit-and-loss statement for the following year.
3. The form and contents of the reports shall be prescribed by the Authority or otherwise shall be in accordance with the Accounting Manual.
4. Each report submitted by the contractor to the Authority shall be a full and accurate accounting report for the period covered.

5. Each quarterly report shall be prepared on a monthly and aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter.

6. Each annual report shall be audited and shall be sent to the Authority within 90 days after the end of each calendar year.

7. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report and within five years of the date of submission of an annual report.

8. In the event that the Authority does not make any comment or propose adjustments to any report within such period, the report shall be considered final and conclusive except for adjustments resulting from physical inventories or audits conducted by the accountants.

#### Article 155

##### Inspection and audit

1. An annual audit shall be carried out by the accountants at the cost of the contractor. Additional audits by the accountants shall be carried out at the request of the Authority at the Authority's cost.

2. The accountants shall have access to all accounting records. The accountants may examine and verify, and confirm with third parties, including those referred to in article 147 of these regulations, at all reasonable times, all charges and credits relating to the contract, including books of account, records, accounting entries, inventory vouchers, pay-rolls, invoices and any other documents, correspondence and records reasonably necessary to audit and verify the charges and credits and the contractor's statements and reports. For that purpose, the accountants may copy or make extracts from such documents, correspondence or records.

3. The accountants shall have the right to visit and inspect, at all reasonable times, all installations, facilities, plants, warehouses, offices, places of business and sites of the contractor, directly or indirectly used in connection with the contract.

4. Each contractor shall instruct its employees, agents and representatives to co-operate in any such visit and examination and to answer and provide explanations for any relevant questions and requests made by the accountants in the course of their examination and verification.

5. The Authority shall have the right to designate personnel to participate in any such audit.

6. The accountants shall conduct an audit in a reasonable manner and make every reasonable effort to minimize the inconvenience to the contractor.

7. The accountants shall complete each annual audit within 120 days from the end of each calendar year and give the Authority a report of the results of its audit.

#### Article 156

##### Retention of books, records and documents

1. All books, records and documents referred to in article 155 shall be maintained for not less than seven years from the date of issue.

2. Documentation in connection with any adjustment proposed by the Authority pursuant to article 154 shall be maintained until the matter has been finally resolved.

#### Article 157

##### Application of these regulations to the Enterprise

These regulations apply mutatis mutandis to the activities of the Enterprise in the Area.

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